



February 1, 2010

TO: Senator Lena Taylor  
Representative Terese Berceau

FR: Attorney Lisa Roys  
Public Affairs Director

RE: spiritual care legislation (SB 384 & AB 590)

Attached please find memos from the Children & the Law Section and the Criminal Law Section regarding the two proposed spiritual care bills currently before the legislature.

In addition to the organizational voice of the State Bar of Wisconsin, many practice sections within the State Bar also take public policy positions on bills and frequently engage in the legislative process. However, from time to time, sections have a difference of opinion and want to take conflicting positions on legislation. The State Bar encourages a healthy dialogue among its members and when necessary, engages in conflict resolution between the differing parties in order to facilitate compromise. There are times when compromise is quite elusive and reaching a consensus position is not possible yet the involved sections each have a specific expertise which the Bar believes would be of value to the legislature. Such a situation exists here with the Children & the Law Section and the Criminal Law Section.

Both the Children & the Law Section and the Criminal Law Section each bring a valuable perspective to the legislative conversation currently taking place regarding SB 384 and AB 590. It is with that in mind that I provide to you the attached memos from the sections articulating their respective positions on the two bills. Neither section will be actively lobbying on either of these bills but are available to answer questions or provide clarification.

If you need additional information or have any questions, please feel free to contact me directly at 250-6128 or [lroys@wisbar.org](mailto:lroys@wisbar.org) or contact Sandy Lonergan at 250-6045 or [slonergan@wisbar.org](mailto:slonergan@wisbar.org).

**State Bar of Wisconsin**

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# Criminal Law Section



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February 1, 2010

TO: Senator Lena Taylor  
Representative Terese Berceau

FR: Gregory J. O'Meara, S.J.  
Assistant Professor of Law, Marquette University  
Chair, Criminal Law Section, State Bar of Wisconsin

RE: spiritual care legislation (AB 590)

Wisconsin Statutes section 948.03, Physical Abuse of a Child, makes it a crime to cause bodily harm or great bodily harm to a child coupled with the mental states of doing so either intentionally or recklessly. According to Section 939.23, Stats., intent means that the actor has the purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause the result. Under 948.03(1), "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

Wisconsin Statutes Section 948.03(6) codifies a defense guaranteed by the Free Exercise clause of the First Amendment to the United States Constitution and Article I Section 18 of the Wisconsin State Constitution which guarantees Freedom of Worship and Liberty of Conscience. Under Section 948.03(6), Stats., "A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone or healing in accordance with the religious method of healing permitted under Sections 48.981(3)(c)(4) or 448.03(6) in lieu of medical or surgical treatment." Although Assembly Bill 590 removes this defense from the codified statutes, it does and cannot remove the constitutional claim under the Free Exercise Clause of the First Amendment of the United States Constitution nor the defense provided by Article I, Section 18 of the Wisconsin State Constitution. Thus, the Criminal Law Section believes that the bill essentially fails to do anything substantive and should not be passed.

By way of context, it is helpful to consider how the law deals with adults who raise the Constitutional defenses. Ordinarily, adults who elect spiritual treatment in accord with the dictates of Christian Science or other religious belief are not subject to interference with their decision. Under 448.03(6), "No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment."

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By contrast, if a parent or guardian chooses to treat a child using spiritual treatment, the courts can intervene and order medical or surgical treatment, overriding the parent or guardian's wishes. Under Sec. 48.981(3)(c)(4), "determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child." That said, nothing in the section "prohibit[s] a court from ordering medical services for the child if the child's health requires it." Thus, the statutes presently provide for protection of the child that can supplant the treatment desires of parents or guardians.

Nothing in the current statute permits a defense for any degree of homicide under Wisconsin law. For example, under the statute as written, no defense would be available in the recent Neumann case because that case involved a homicide charge. Further, the parents could not claim a mistake of law defense because mistakes of criminal law are not recognized in Wisconsin. (Wisconsin Statutes Sec. 939.43(1).) The defense is limited to crimes listed in 948.03, which may be serious, but they do not result in the death of the child.

Because the defense presently granted by statute is rooted in a constitutional basis, removing that defense will be subject to an onerous standard of review, more stringent than the level of rational review normally accorded legislative decisions. Therefore, removing this defense from the statute may tie up prosecutors in court on constitutional matters well beyond the ordinary competence of criminal practitioners. Further, AB 590 will almost certainly be appealed, costing the state money to litigate a bill that conflicts on its face with rights enshrined in both the Federal and State Constitutions.

In the final analysis, any physical injury of a child is a terrible thing. When people cause injury by intentional or reckless action, it is a crime. The Wisconsin statutes provide a defense for a very limited number of persons who, in the free exercise of their religious beliefs, treat children by non-medical or non surgical means. In these situations, the courts are always empowered by statute to intervene and provide these children with medical or surgical treatment. The Criminal Law Section believes that proposed Bill AB 590 conflicts with the constitutional rights of Christian Scientists and others while not necessarily improving the well-being of children. We oppose its passage.

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

*If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at [slonergan@wisbar.org](mailto:slonergan@wisbar.org) or (608) 250-6045.*

# Children & the Law Section



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February 1, 2010

TO: Senator Lena Taylor  
Representative Terese Berceau

FR: Children & the Law Section

RE: Spiritual care legislation

Wisconsin's laws do not adequately protect children whose parents have religious beliefs against medical care. Two bills have been introduced in the Legislature to address this issue: AB 590 and SB 384. A review of United States and Wisconsin Supreme Court cases reveals that the Free Exercise of Religion Clause of the First Amendment of the U.S. Constitution does not excuse a parent's medical neglect of a child. The State of Wisconsin has a legitimate interest in the health and welfare of its children and can regulate parental behavior to assure the well-being of its children.

**The Children & the Law Section has taken a position of "Active Support" of AB 590.** Assembly Bill 590 eliminates exceptions for spiritual treatment of a child in the laws criminalizing physical abuse of a child (948.03(6)), governing the practice of medicine or surgery (448.03(6)), authorizing investigation of child abuse or neglect (48.981(3)(c)4), and authorizing administration of psychotropic medication to juveniles in correctional custody (938.505(2)(a)1).

**Rationale:** All the exceptions repealed by AB 590 deprive some children of protections afforded other children and their elimination will give Wisconsin children equal protection of the laws of Wisconsin.

Section 948.03 creates the crime of child abuse. Subsection 6 of that section, provides a religious defense to felony child abuse charges when a person "provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s.48.981(3)(c)4 or 448.03(6) in lieu of medical or surgical treatment." This law sends a message to parents and others that state law permits them to rely on religious methods in lieu of medical care in cases other than child abuse.

For example, in the recent case of Kara Neumann in Marathon County, the parents argued that this defense to abuse carried over to the reckless homicide with which they were charged. Kara died at age 11 of untreated diabetes. She was home-schooled and had not been seen by a doctor since she was three years old. Her parents proclaimed their intention to rely only on prayer to heal her even when alarmed relatives were urging them to take Kara to a doctor. The circuit court judge correctly ruled that the defense did not extend to the charge, and the parents were convicted of reckless

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homicide. They will undoubtedly continue to raise the issue in their appeals. The confusion between statutes can be avoided by removing the exception from 948.03. The real purpose of the criminal code is deterrence, but if laws are unclear or contradictory, they may not deter harmful behavior. Removing the language from 948.03(6) does not eliminate a parent's constitutional rights.

Further complicating the Neumann case is the religious exemption to civil child neglect at s. 48.981(3)(c)4. After Kara died, Child Protective Services (CPS) in Marathon County sought to monitor the health of her surviving siblings, but a judge ruled that the religious exemption prevented the County from doing so. Diabetes is hereditary; Kara's siblings are at an increased risk of diabetes. It was important for CPS to be able to send social workers to the home to check on the health of the siblings and to have a doctor examine them. But the Juvenile Court judge dismissed CPS's petition to have the children adjudicated in need of protection or services because of the religious exemption at 48.981(3)(c)4.

AB 590 seeks to give all children equal protection in Child Protection Statutes as well as in the Criminal Code. The elimination of the exceptions would not interfere with an adults' practice of the Christian Science faith or any other faith, but would protect a child from a parent's or guardian's neglect of a child's medical condition by clarifying that 448.03(6) applies to adults and not to children. It would also protect a child when a parent or guardian unreasonably withholds psychotropic medication to a juvenile who is under the supervision of the Department of Corrections or a County Department, when the juvenile is at least 14 years old and consents to the administration of the medication.

AB 590 does not unreasonably burden parents or guardians in the practice of their religion or faith, but it does protect children. AB 590 closes loopholes and holds all parents to reasonable standards of care of their children. The current exemption from child protection and criminal statutes for treatment through prayer endangers children because parents are encouraged to treat their child's illness only through prayer regardless of the severity of the illness. When ill, a child may not ever be seen by someone who is a mandated reporter of abuse or neglect, and death may result from the lack of medical care, as happened with Kara Neumann or could happen to children like Kara's siblings. If parents knew that they were subject to Wisconsin's child protection and criminal laws the same as any other parent, children could be spared needless suffering and deaths prevented.

**The Children and Law Section has voted to "Actively Oppose" SB 384.** Although its sponsor and the Christian Science Church claim SB 384 will improve protection for children in faith-healing sects; it actually increases the danger to them.

Section 1 of SB 384 clarifies the regulation of medical practices. Essentially, Chapter 448 is used to establish the Medical Board and the rules and regulations pertaining to the practice of medicine. The proposed clarification simply references Chapter 48 as authorizing medical or surgical treatment of a child. This reference is unnecessary as it does not add to or change existing law.

Section 3 of SB 384 repeals Sec. 948.03(6) which offers a religious treatment defense for only child abuse.

Section 2 of SB 384 then extends a religious defense to all crimes against children under Chapter 948, including those involving sexual assault of a child, incest, child abuse, child neglect and medical neglect. It would also extend the religious defense to cases such as recklessly endangering safety under 941.30(1) and reckless homicide under 940.06. It does this by creating a new privilege to a parent or guardian. The proposed sec. 939.45(5m), provides an opportunity to a parent or guardian who maybe charged with conduct which would be criminal to claim that their conduct is justified because it "is in good faith and is a reasonable use of spiritual,

prayer, or religious treatment in lieu of medical treatment for a condition for an individual" who has not attained the age of 18 years.

This claim of privilege may apply to parents if they were charge in a situation like that of the autistic child in Milwaukee who was killed in 2003. In lieu of medical treatment, 8-year-old Terrance Cottrell was provided with the "religious treatment" of an exorcism in which a 157 pound preacher sat on his chest and suffocated him. Wisconsin did not excuse the child's death then: the preacher was convicted of Child Abuse in 2004.

Numerous cases have been reported in the United States and abroad of children being killed through "religious treatment." Many of these children were said to be "sinners" or "possessed" or even "witches" by their parents. Many more children are abused and neglected but physically survive the ordeal only to be left with severe emotional trauma. Furthermore, hundreds of children have died because their parents relied exclusively on prayer to heal disease. A 1998 *Pediatrics* study reported on 172 U.S. children who died after their parents withheld medical care on religious grounds and found that 140 of the children would have had at least a 90% likelihood of survival with timely medical treatment.

Under SB 384, instead of evaluating whether a parent acted as a reasonable person, a jury would have to try to determine whether the parent reasonably used spiritual, prayer or religious treatment to treat a child's "condition". SB 384 sets out nine "relevant factors that the jury must consider." These include:

1. "The age and mental capacity of the individual under the age of 18. However, the proposed legislation does not say why and how that is relevant.
2. "The health condition for which the individual under the age of 18 was being treated by spiritual, prayer, or religious treatment." Under current law, parents do not need to seek medical care/treatment for trivial maladies.
3. "Whether the individual under the age of 18 exhibited symptoms that would be, or should have been, recognized by the actor as symptoms of a life-threatening condition or of a condition that would result in great bodily harm." What does "should have" mean here? If it means the actor should have responded as an ordinary prudent and reasonable person, that would be appropriate, but the bill creates a special or different standard of reasonable for a parent or guardian who uses a religious healer.
4. "The length of time the individual under the age of 18 had the condition or symptoms.
5. "The likelihood that medical treatment would have eliminated the condition." That is not an appropriate justification for depriving a child of medical treatment. For example, treatment will not "eliminate" childhood diabetes, but medical treatment usually controls it and allows persons to live a nearly normal life.
6. "Any risk of harm or negative side effects of medical treatment for the condition" and 7. "Any risk of harm from failure to provide medical treatment for the condition." Does this mean that if cancer treatments make a child nauseous, parents don't have to provide medical treatment? Medical treatment often has risks or side effects associated with it, but the risk of not treating the illness may be far more severe, including the possibility of death.
8. "The experience of the family of the individual under the age of 18 in relying upon medical treatment" and 9. "The experience of the family of the individual under the age of 18 in relying upon

spiritual, prayer, or religious treatment." SB 384 requires juries to evaluate the actor's experiences with medical treatment and spiritual treatment to determine whether it was reasonable for him to withhold medical care. Therefore, if parents have always prayed for their child and the child got better from the flu, a cold, etc., under SB 384 it may be reasonable to allow the Neumann's to withhold medical care from their diabetic daughter, let her die, have no legal consequences and even to allow them to do the same to another child. Similarly, if a parent has had a disappointing experience with one or more doctors, it may be reasonable for him to withhold all medical care for all diseases.

SB 384 does not rank its nine factors in any order of importance nor even set forth whether the jury's findings on them weigh for or against a determination of reasonableness. As SB 384 is written, any finding on any factor could raise reasonable doubt in a juror's mind.

SB 384 would have judge and jury consider many vague stories and anecdotes that purportedly justify withholding lifesaving medical care. Prosecutors would have to expend considerable resources to rebut their significance.

Proponents claim that SB 384 is needed to give the defendant a "fair" opportunity to explain his religious beliefs and practices in court. Under current Wisconsin law as written, a parent is allowed to testify about their religious beliefs. For example, Dale Neumann testified for three hours about his religious beliefs at his trial. Wisconsin already has a reasonable person standard for criminal negligence and recklessness and the legislature should not create a reasonable faith healer standard that has no precedent in any state code.

In 1994 the Wisconsin Legislature rejected SB 544 that would have created a religious defense to homicide. SB 384 is just another attempt at the same thing as SB 544.

The Children & Law Section has an obligation to look out for the interests of children. Even one child dying because of medical neglect is too many. If SB 384 were to become law, parents would have a statutorily sanctioned justification to ignore medical treatment for their critically ill child and it would make protecting even siblings more difficult.

SB 384 is not about giving parents a right to pray, but about giving Christian Scientists and any other parent or guardian, the right to rely exclusively on prayer "**in lieu of medical treatment**" for a child's condition. The only time it is reasonable to rely exclusively on prayer in lieu of medical treatment is when a child has a trivial, self-limiting illness or after parents have, in a timely manner, consulted a physician who has advised them that medical treatment is not likely to save the child's life or substantially enhance the child's quality of life.

SB 384 serves no useful purpose and greatly endangers Wisconsin children. It creates a "privilege" in law for conduct that is "otherwise criminal." Wis. Stat. 939.45. The privilege extends to criminal neglect, recklessly endangering safety, and even to homicide, none of which have religious defenses in current statutes. While the Christian Science Church often says SB 384 is not an "exemption" from prosecution and that prosecutors can still bring charges, the "privilege" sought is so broad and creates such a burdensome set of factors that are "relevant" for juries to consider, it places an unnecessary burden on a prosecutor's actions to protect children.

Others have opined that denying parents and guardians the exception for prayer in abuse, neglect, recklessly causing harm, etc. cases, could raise Constitutional issues and tie up prosecutors in court on constitutional matters well beyond the ordinary competence of criminal practitioners. That argument is insulting to prosecutors and defense attorneys. No parent has a constitutional right to commit felony child abuse. The U.S. Supreme Court settled that issue in *Prince v. Massachusetts*, 321 U.S. 158 (1944) when it held that the government has broad authority to regulate the actions and treatment of children. It went on to say that

parental authority is not absolute and can be permissibly restricted if doing so is in the interests of a child's welfare:

*"Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."*

The U.S. Supreme Court recognized that children face many potential harms from activities that adults may engage in. The State of Wisconsin has a compelling interest in protecting life and that interest can justify interfering in parental decisions.

When a child dies, as Kara Neumann did, for the religious convictions of her parents, that child has essentially become a human sacrifice. Neither the U.S. nor the Wisconsin Constitution permits human sacrifice. Attorneys within the Children and Law Section work daily to protect the rights, interests, safety, health, and well-being of children. Supporting AB 590 and defeating SB 384 is not just an academic exercise, it is necessary to give children equal protection of the law in Wisconsin.

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**Christian Science Committee on Publication**  
(Representing Wisconsin Christian Science Churches in Legislative Affairs)

**MYTH VERSUS FACT ABOUT CHRISTIAN SCIENCE**

<u>Myth</u>	<u>Fact</u>
<ul style="list-style-type: none"><li>• Christian Scientists let children die.</li></ul>	<ul style="list-style-type: none"><li>• <b>FALSE.</b> Christian Science has a long and consistent record of quick and whole healing of children. It puts the well being of children first. In Christian Science, results that heal matter, BUT never at the expense of anyone's life.</li></ul>
<ul style="list-style-type: none"><li>• Christian Science prohibits medical treatment.</li></ul>	<ul style="list-style-type: none"><li>• <b>FALSE.</b> Christian Science does not prohibit use of medicine. For over 140 years, families have used Christian Science because it works.</li></ul>
<ul style="list-style-type: none"><li>• Christian Science shuns members who use doctors.</li></ul>	<ul style="list-style-type: none"><li>• <b>FALSE.</b> Christian Science honors every individual's choice of appropriate health care for themselves and their families.</li></ul>
<ul style="list-style-type: none"><li>• Christian Scientists believe children's illnesses are God's will.</li></ul>	<ul style="list-style-type: none"><li>• <b>FALSE.</b> In Christian Science it is never God's will that a child suffer or die. God is all-loving and all-good and does not send sickness or suffering. God is unconditional love.</li></ul>
<ul style="list-style-type: none"><li>• Prayer does not heal physical illness.</li></ul>	<ul style="list-style-type: none"><li>• <b>FALSE.</b> This is contrary to the 140 year record of thousands of individuals and families who have found healing through prayer in Christian Science to be effective. Some of these healings are medically verified.</li></ul>

Contact: Joseph G. Farkas, Christian Science Committee on Publication for Wisconsin  
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Prepared: March 17, 2010

## Christian Science Committee on Publication for Wisconsin (Representing Wisconsin Christian Science Churches in Legislative Affairs)

Thank you Madam Chair and members of the Assembly Children and Families for this opportunity to present testimony in opposition to AB590.

My name is Joseph Farkas. I am the legislative and media liaison for the Christian Science Churches and Societies in Wisconsin. While I am appreciative of the opportunity to address this committee I am disappointed that I appear to be the only invited speaker opposing this bill today. While we had hoped --like the proponents of this legislation-- to be able to have several speakers with different expertise address this committee today -- unfortunately we were told "no." So, I am it! But I want you to know there are several other individuals with unique expertise whose opinions you will not hear today.

We believe that a hearing-- however informational it might be-- is likely to present a **slanted viewpoint with only speakers who support the bill allowed to speak** while those opposing the bill are not on the "invited" speaker list.

First and foremost, I would like to say we respect that Rep. Berceau is trying to solve a problem. We respectfully disagree however that her legislation is the proper legislative remedy to solve the problem.

I would now like to focus on three points.

1. Clear up what is being said about the practice of Christian Science-- what it is and what it is not.
2. Explain why AB 590 does not protect children as the author desires it to do.
3. Explain why a compromise bill being authored by Senator Taylor does a better job of protecting children than this bill.

### **First, what is the practice of Christian Science and what it is not**

The much quoted Neumann case deserves special mention. The Neumanns were not Christian Scientists. Christian Scientists do not believe in martyring their children. Christian Scientists believe that nothing is more important than the protection and well-being of children. The Christian Science Church has run many articles highlighting the abuse of children and calling for solutions. The Church condemns neglect or harm of children in any form.

We do not feel it is the will of God for children to suffer or die. The Church does not dictate the health care choices of individual members or tell them that they can't go to doctors. Necessary medical care for seriously ill children is the standard of care in Wisconsin. Let me repeat that and say it to you differently. **Christian Scientists have sought medical care when the life of a child has been threatened or a belief that greater harm would come from not seeking medical care.** Christian Scientists do not believe children should be harmed or die because of our religious practice. We never imagined that the tragic death of a child would be automatically linked to the Christian Science church. Again, the Neumanns are not Christian Scientists.

Upon learning of the death of the Neumann's child, we were the first to publicly call for reform of a law where the public impression was that it created a shield for reckless or irresponsible behavior towards children by people who utilize spiritual healing.

If the goal of the legislation is to improve existing Wisconsin law so that it protects children, AB 590 does not accomplish that goal. AB 590 could uproot a child's life based on someone's intolerance. It does not accommodate people who effectively and responsibly utilize spiritual care with their children.

While some people present today may not believe that spiritual healing works, many people in Wisconsin have found it to be very effective. I have found it to be quick and effective. The practice of Christian Science has been around for generations.

### **Objections to AB 590**

Let me summarize our objection to AB590 and then tell you why we believe that the hard work of Senator Taylor to achieve a compromise bill is the better route to go. We believe her bill achieves the goals that Rep. Berceau desires in a stronger, clearer law that really does protect kids.

#### **1. AB 590's change to the civil child protection law**

One of the serious flaws in Rep. Berceau's bill is that it would permit a subjective determination that minority religious and cultural beliefs and practices "present a specific danger". This term is not defined in Wisconsin law or in AB590. Because the bill leaves the term "specific danger" open to interpretation, this language could be read to authorize the child protection authorities to intervene in cases involving minority cultural or religious practices even where there is no harm or threatened harm to a child.

People who don't believe prayer is effective may consider any use of prayer rather than medical treatment a specific danger to a child, even if the child is not seriously ill.

#### **2. AB 590's change to the Medical Practice Act**

AB 590 changes the wording in the Medical Practices Act concerning Christian Science from "person" to "adult". This attack on Christian Science has nothing to do with the Neumann case. AB 590's change could be read to create questions about whether families can use Christian Science healing with children. Christian Science treatment not only heals illness but resolves other problems that have nothing to do with health.

It was our hope that our constitutional lawyers would have been allowed to address that issue today but again, we were told we could not. I am not a lawyer and can't speak to the serious constitutional issues raised by this bill. So those issues—while really important—will not be talked about today.

**Because we do not want to see another child die** at the hands of people who hide behind some religious belief that allow any child to be harmed or to die— we have worked extremely hard with Senator Taylor to see if we might find some acceptable middle ground. This had been our desire with Rep. Berceau as well but unfortunately we did not reach a compromise. Today I am before you at this informational hearing asking you not to move her bill forward and instead, if you do anything – amend Rep. Berceau’s bill to include the language contained in Senate Bill 384.

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SB 384 is a compromise bill that protects children. It does so by making it clear that the standard of care for seriously ill children is necessary medical care, and that the State may take immediate custody of a child and provide medical attention. The bill addresses religious discrimination by allowing parents to present evidence about the reasonableness of their behavior. The parents must have behaved reasonably for the judge or jury to say that the affirmative defense provision applies. SB 384 is constitutional and solves the problems presented by the Neumann case by repealing the part of the criminal child abuse law that the Neumanns tried to use as a bar to prosecution.

In conclusion, we urge this committee to consider passing laws that truly protect children. We also hope the legislature is willing to honor one of the founding principles this country was founded upon by accommodating reasonable religious practices. Our belief is that it is possible for laws to be passed that do both things well.

We oppose AB590 and hope it will not move forward unless the compromise language suggested in SB 384 is substituted. Thank you for this courtesy. We will be submitting comments to this committee after we hear what is said today because we were not allowed to have more than myself appear before this committee. I do not want this committee to think that there weren’t others who wish to speak. We will respectfully listen to what is said and provide factual commentary to committee members in response to what is said today by invited speakers.

If you take any action at all, we hope you will give consideration to the compromise being advanced by Senator Taylor. I would be happy to answer questions if I can. Otherwise, others in the audience will be taking down your questions and if I can’t answer them now, we will be happy to provide written answers to you.

Thank you for your consideration and attention.

Respectfully submitted

Joseph G. Farkas, Committee on Publication for Wisconsin

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**Testimony of Shawn Peters**  
**Informational Hearing on Assembly Bill 590**  
**Wisconsin Assembly Committee on Children and Families**  
**March 17, 2010**

Good afternoon. My name is Shawn Peters. I hold a Ph.D. from UW-Madison, and I currently teach in the Center for Educational Opportunity in the School of Education. I've published three books on religion and law, the most recent of which is entitled *When Prayer Fails: Faith Healing, Children, and the Law*, published by Oxford University Press in 2007. It's a fairly comprehensive historical treatment of the issue we are discussing here today. It's not a book that purports to resolve matters of ultimate religious truth, and I have absolutely no intention of going down that road here today.

Instead, I thought I would try to contribute to this enlightening conversation by briefly bringing to bear the lessons that can be gleaned from some of the history that I've studied.

For more than a century, prosecutors throughout the United States have filed criminal charges against spiritual healers who have failed to furnish well-proven and readily available medical treatments to the ailing children in their care. These prosecutions – for offenses ranging from abuse and neglect to manslaughter – have been grounded in the idea that legal protections for religious conduct, such as those spelled out in the First Amendment, do not extend to protect behavior that clearly endangers the lives of minors.

Such cases can be complicated, though, by legal provisions that appear to exempt from criminal prosecution parents who substitute faith healing for medicine when treating the illnesses and injuries of their children.

Essentially, these exemptions seem to excuse criminal conduct – the failure to provide medical treatment to a sick kid – when it is grounded in religious ideology.

Wisconsin has one of these exemptions. It's Chapter 948.03(6).

If we're going to think seriously about the future of this measure, I think it's important to take a hard look at where, exactly, it came from.

The short answer is that it came from the Christian Science Church. Its representatives wrote, word for word, that piece of state law.

In 1987, in Wisconsin, church representatives approached two state lawmakers and persuaded them add "our suggested amendment" to a larger bill outlining crimes against children. The final version of the bill – which became law and is still on the books as 948.03(6) – reflected almost verbatim the proposal made by Christian Science representatives to the two legislators.

I am not exaggerating here: I went to the archives of the LRB and found the correspondence, and it's really just a cut-and-paste job. The church was so closely identified with the measure that drafting records referenced the "Christian Science exception" for protecting faith healing practices.

People don't really attention to such provisions until they threaten to derail the prosecution of parents who have engaged in conduct that seems, to most us, to be incredibly reckless. This has happened in numerous states, including Wisconsin.

On Easter Sunday of 2008, the 11-year old from Wausau named Kara Neumann died from diabetic ketoacidosis (DKA), a complication of diabetes.

A pediatrician most likely would have been able to diagnose the ailment and prescribe treatment (insulin therapy), but Kara's parents chose to treat her with prayer alone.

In late April of last year, authorities in Marathon County charged Dale and Leilani Neumann with second-degree reckless homicide. They were charged with that crime in part because prosecutors determined that they probably couldn't be charged with abuse and neglect -- because of the exemption I just referenced.

In separate trials that drew international attention, the Neumanns were successfully prosecuted. Their case, however, is far from over. Their appeal is inexorably working its way toward the state supreme court, and, as a matter of law, I think it has a decent chance of succeeding. In making their claim that their right to due process of law has been violated, the Neumanns are saying -- in essence -- that Wisconsin law is confusing.

I think they are right. I don't think the law is as precise as it should be in defining parents' legal obligations to their sick or injured children.

What's more, it does not reflect the will of the overwhelming majority of Wisconsin residents. (I think that's apparent when you look at the impressive coalition of groups that are calling for an elimination of this faith-healing exemption.)

This is where the legislature comes in. You have the power to clarify state law in this area before the judicial branch steps into the breach.

The question is: what kind of change should you render?

We're here today discussing the merits of Assembly Bill 590, which I think does an excellent job in clearly spelling out a parent's duty to provide prompt medical care to a sick or injured children. It does so by removing the provisions of Chapter 948 that the Christian Science Church wrote more than two decades ago.

As the debate over this measure and others unfolds, you are bound to hear a variety of emotional and perhaps confusing claims about how these laws should be crafted, and why. Some will argue that state law should protect longstanding and valid religious practices that are more helpful and harmful. You will be told that such safeguards are necessary for religious faiths to survive.

Wary of being seen as hostile to religion, lawmakers often take such claims at face value. I encourage you to resist this temptation and ask hard questions about the very serious implications of letting a church essentially write laws meant to safeguard the health and welfare of our children. That happened once before in Wisconsin, and the results were a public policy debacle -- we got a confusing law that seems to privilege the religious ideology of parents over the health of children.

Don't get me wrong: Churches can play a valuable role in our society. (And I say that as someone who has written very respectfully about religious groups ranging from the Jehovah's Witnesses to the Amish.) However, churches have no business writing -- and then rewriting -- our child abuse and neglect laws in a way that suits their own narrow, sectarian interests. These measures must reflect the broad desire of *all* Wisconsinites to balance protections for religious liberty against safeguards for the state's most vulnerable citizens, our children.

AB 590 does exactly that.

Thank you.

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR WISCONSIN  
152 WEST WISCONSIN AVENUE MILWAUKEE, WISCONSIN 53203  
TELEPHONE (414) 276-2611

February 27, 1987

Representative John D. Medinger  
Post Office Box 8952  
Madison, WI 53707

Dear Representative Medinger:

Re: <sup>Senate 203</sup>  
Assembly Bill 70

Please consider sponsoring an amendment to <sup>Senate 203</sup> Assembly Bill 70 relating to abuse of children.

Apparently the Wisconsin Supreme Court has placed an interpretation on the present law which would make withholding medical treatment a crime if the child is in a situation which poses cruel maltreatment.

Our suggested amendment would be added on page 29 line 12 and would read as follows:

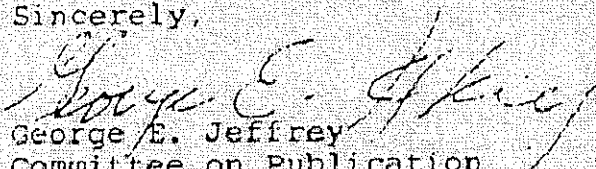
948.03(6)

940.201(3)(e) "No person shall be guilty of an offense under this section for the sole reason he provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under the laws of this state in lieu of medical treatment."

I would be happy to do what you feel is necessary to support the amendment through the legislative process.

Looking forward to your response,

Sincerely,

  
George E. Jeffrey  
Committee on Publication

43.01  
413.04(6)



JUL 16 1987

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR WISCONSIN  
152 WEST WISCONSIN AVENUE MILWAUKEE, WISCONSIN 5320  
TELEPHONE (414) 76-2611

July 15, 1987

Senator Brian D. Rude  
State Capitol - 319 South  
Madison, WI 53707

Dear Senator Rude:

Please consider sponsoring a second amendment to Senate  
Bill 203. This language would be added to s.s. 940.201,  
Criminal Code.


The new language would read:

Page 29, line 11: after that line insert:

"(6) TREATMENT THROUGH PRAYER. A person is  
not guilty of an offense under this section  
solely because he or she in good faith selects  
and relies on prayer or other religious means  
for treatment of disease or for remedial care  
of the child."

Looking forward to your response.

Sincerely,

  
George E. Jeffrey  
Committee on Publication





**Brian D. Rude**

**STATE SENATOR, 32ND SENATE DISTRICT**

TO: Bruce Feustal, Senior Attorney  
Legislative Reference Bureau  
Room 219 North, State Capitol  
266-0131

FROM: Laurie E. Smith, Legislative Assistant  
to Senator Brian D. Rude  
Room 319 South, State Capitol  
266-5490

DATE: July 22, 1987

RE: Amendment to Senate Bill 203

Attached is a letter Senator Rude received from George Jeffrey which requests an amendment to Senate Bill 203. Senator Rude would like an amendment drafted which uses the language included in Mr. Jeffrey's letter.

If you have questions or need clarification of this request, please feel free to contact me. Thank you.

Attachment

1987

DRAFTING REQUEST

Extra  
Copies

LRB

Date rec'd 4/23Received by BF

Wanted

Drafter

S)

A

Bill

Jt. Res.

Res.

Sub. Amdt.

Amd

SUBJECT

to SB 703

FOR

Medinger

BY/Representing

George Jeffrey

BILL INDEX

This file MAY BE SHOWN  
to any legislator

(Signature)

MAY CONTACT

INSTRUCTIONS:

Christian Science exemption

**GEORGE JEFFREY**  
CHRISTIAN SCIENCE COMMITTEE  
ON PUBLICATION FOR WISCONSIN

152 WEST WISCONSIN  
MILWAUKEE, WISCONSIN

(414) 278-2811

Work/0	/P1	/P2	/P3		1st	2nd	3rd	4th	5th
				Drafted					
				Reviewed	<u>KC 4/24</u>				
				Typist	<u>AW 4/24</u>				
Original to drafter				Proofed	<u>AW 4/24</u>				
				Submitted					
All "P" copies: give to drafter									
FE sent for					FE-S/L	FE-S/L	FE-S/L	FE-S/L	FE-S/L
					PUBDEB	PUBDEB	PUBDEB	PUBDEB	PUBDEB
					RETIRE	RETIRE	RETIRE	RETIRE	RETIRE
					TAXEXM	TAXEXM	TAXEXM	TAXEXM	TAXEXM

Requested  
ORIGINAL draft:

(Please sign below)

Received  
JACKET:

OK Neg

SENATE AMENDMENT /  
TO 1987 SENATE BILL 203

1 At the locations indicated, amend the bill as follows:

2 1. Page 29, line 11: after that line insert:

3 "(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense  
4 under this section solely because he or she provides a child with treat-  
5 ment by spiritual means through prayer alone for healing in accordance  
6 with the religious method of healing permitted under s. 48.981 (3) (c) 4  
7 or 448.03 (6) in lieu of medical or surgical treatment."

8 (End)